

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

MICHELLE HERRERA,)	
)	
Plaintiff,)	CIVIL ACTION NO. <u>2:22-cv-03193-BHH</u>
)	
vs.)	
)	
LOWE’S HOME CENTERS, LLC)	
)	
Defendant.)	
_____)	

NOTICE OF REMOVAL

Defendant Lowe’s Home Centers, LLC (“Lowe’s) by counsel, hereby removes Case No. 2022-CP-18-01284 from the Court of Common Pleas, County of Dorchester, South Carolina, to the United States District Court for the District of South Carolina, Charleston Division, pursuant to §§ 1332, 1441 and 1446 of Title 28 of the United States Code.

1. On August 17, 2022, Plaintiff filed a Complaint in the Dorchester County Court of Common Pleas. This Complaint was served on Lowe’s on August 22, 2022, a true and correct copy of which is attached hereto as Exhibit A.

2. The Complaint alleges that Michelle Herrera was shopping at a Lowe’s store located in Summerville, South Carolina (Dorchester County) on May 7, 2021, when an unsecured piece of lumber fell and struck her face. (Compl. ¶¶ 5 and 7).

3. Plaintiff is seeking actual and punitive damages for her alleged injuries. (Compl. ¶¶ Prayers for Orders).

4. This Notice of Removal is timely, in accordance with 28 U.S.C. §1446(b)(1), because less than thirty (30) days have elapsed since receipt by Defendant Lowe's of the first pleading served on Defendant.

5. Pursuant to 28 U.S.C. §1446(a), a copy of all process, pleadings, and orders served upon Lowe's in said action is attached hereto as Exhibit A.

6. Venue for this removal action is proper pursuant to 28 U.S.C. §1441(a), because the original action was filed in Dorchester County, South Carolina, which is within this District and Division, and the alleged incident on which the Plaintiff's claim is based occurred in this Division, at Defendant's store located in Summerville, South Carolina. (*See* Complaint, ¶¶ 5, and 7).

7. This is a civil action in which there is complete diversity of citizenship between Plaintiff and Defendant. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1441 because it could have been filed in this Court under 28 U.S.C. § 1332.

8. The Plaintiff is a citizen of Dorchester County, South Carolina. (Compl. ¶ 1).

9. Lowe's Home Centers, LLC is and was at the time of the filing of the Complaint a foreign limited liability company whose sole member is a corporation incorporated in North Carolina with its principal place of business in North Carolina. *See*, Defendant's Answers to Local Rule 26.01 Interrogatories. Accordingly, Lowe's Home Centers, LLC is not a citizen of South Carolina.

10. Plaintiff alleges that she suffered a personal injury for which Plaintiff seeks actual and punitive damages. (Compl. ¶¶ Prayers for Orders).

11. The amount in controversy exceeds \$75,000.00. (Compl. ¶¶ 7, 8, 12, and Prayers for Orders). Plaintiff's Complaint contains no limitation of damages, and in fact seeks actual and

punitive damages for, *inter alia*, “extreme pain,” “great physical harm and injury,” “permanent injuries,” “future pain and suffering,” and “future medical costs”. (Compl. ¶¶ 12, 17).

12. Pursuant to 28 U.S.C. §1446(d), written notice of such filing will be given promptly to the Plaintiff by the undersigned counsel for Defendant, and copies of this Notice will be filed promptly with the Clerk of Court for Common Pleas for Dorchester County, South Carolina.

13. This case is being removed subject to and without waiver of any challenges that Defendant Lowe’s may have as to any claims or defenses that may be available to it.

WHEREFORE, because this Court has jurisdiction over this action pursuant to 28 U.S.C. §1332, removal of the above-styled case to this Court is appropriate.

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